

Nixon, Hargrave, Devans & Doyle

Attorneys and Counselors at Law

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

SUITE 800

ONE THOMAS CIRCLE

WASHINGTON, D. C. 20005

(202) 457-5300

FAX: (202) 457-5355

ONE KEYCORP PLAZA
ALBANY, NEW YORK 12207
(518) 427-2650

1600 MAIN PLACE TOWER
BUFFALO, NEW YORK 14202
(716) 853-8100

990 STEWART AVENUE
GARDEN CITY, NEW YORK 11530
(516) 832-7500

30 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10112
(212) 603-3000

FEB 9 '94

FEDERAL COMMUNICATIONS
COMMISSION
SECRETARY

CLINTON SQUARE
POST OFFICE BOX 1051
ROCHESTER, NEW YORK 14603
(716) 263-1000

WRITER'S DIRECT DIAL NUMBER:

(202) 457-5321

February 8, 1994

Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission
1919 M Street, N.W.
Room 852
Washington, D.C. 20554

RE: General Docket No. 90-314, Amendment of the Commission's
Rules to Establish New Personal Communications Services

Dear Mr. Fishel:

QUALCOMM Incorporated, by its attorneys and pursuant to Section 1.1214 of the Rules and Regulations of the Federal Communications ("FCC" or "Commission"), hereby undertakes to advise you of an apparent violation of the Commission's ex parte rules which are codified at 47 C.F.R. § 1.1200 et seq.

In Gen. Docket No. 90-314 the Commission has considered both the rulemaking and pioneer's preference aspects of the introduction of Personal Communication Services ("PCS"). The Commission has determined that the portions of this proceeding concerned with pioneer's preferences are restricted and that ex parte contacts are prohibited. Tentative Decision and Memorandum Opinion and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 FCC Rcd 7794, 7813 (1992).

On August 19, 1993 Omnipoint Corporation filed a "Semi-Annual Experimental License Progress Report."¹ The Report was not served upon any of the parties to this

Mr. Andrew S. Fishel
February 8, 1994
Page 2

proceeding. The Report, in both its text and in an Attachment, included repeated explicit and disguised references to QUALCOMM, criticizing QUALCOMM's proposed Personal Communications Services technology upon which its request for pioneer's preference is based. In this respect, Omnipoint exceeded the requirement of its experimental license that it report on the progress of its own experiments. The gratuitous remarks concerning QUALCOMM are clearly outside the scope of any exemption to the ex parte rules which Omnipoint may enjoy by virtue of Section 1.1204(b)(1).

On September 15, 1993, after becoming aware of the existence of the Omnipoint Report, QUALCOMM filed a Motion to Strike the Experimental Report, requesting that it not be included in the record of this proceeding. In addition, in its Motion QUALCOMM informed the Commission that it believed the Omnipoint Report was a prohibited ex parte presentation. Omnipoint opposed this Motion, but did provide a revised Amendment to the Report in which specific references to QUALCOMM, but not to QUALCOMM's CDMA PCS technology, were deleted. In a footnote Omnipoint agreed to be "willing to replace" the Attachment with the revised version. However Omnipoint did not request that the Commission make such a replacement. Moreover, Omnipoint made no effort to revise the specific textual references to QUALCOMM and to QUALCOMM's PCS technology.

On February 3, 1994 the Commission released its Third Report and Order in Gen. Docket No. 90-314, FCC 93-550. In that Report and Order, the Commission failed to act upon QUALCOMM's Motion to Strike. The Commission did, however, rely upon Omnipoint's Report. In fact, at Footnote 68, the Report and Order cites to the first page which was the subject of QUALCOMM's Motion to Strike.²

In view of the Commission's failure to act on the QUALCOMM Motion to Strike and the Commission's reliance on the material contained in that Report, it is now

² However, QUALCOMM is unable to find the sentence referred to by the Commission on the page cited in Footnote 68. Indeed, QUALCOMM finds that virtually none of the Commission's few citations to Omnipoint's filings are correct.


Nixon, Hargrave, Devans & Doyle

Mr. Andrew S. Fishel
February 8, 1994
Page 3

necessary to bring this matter to the Commission's attention again. In doing so, QUALCOMM respectfully requests that you take appropriate action pursuant to the Commission's ex parte rules, 47 C.F.R. § 1.1216.

Respectfully submitted,

QUALCOMM Incorporated

By: 
Veronica M. Ahern
Albert Shuldiner

Its Attorneys

cc: Douglas G. Smith, Omnipoint Corporation
Mark J. Tauber, Piper & Marbury